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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,463	11/12/2003	Kazuhiro Maeda	117742	5741
25944	7590	10/30/2006	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			SWENSON, BRIAN L	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/705,463	Applicant(s) MAEDA ET AL.	
	Examiner Brian Swenson	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-9 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-9 is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Acknowledgment is made of the amendment filed on 16 August 2006 where:
  - A. Claims 1 and 4-6 have been amended;
  - B. Claims 2-3 cancelled.
  - C. Claims 7-9 have been added.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 and 6 recite the limitation "said locking pawl" in lines 2 and 3, respectively. There is insufficient antecedent basis for this limitation in the claim.

The claims have been examined to depend from claim 4, as they previously did, as claim 4 also provides antecedent basis for "said locking pawl."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. Claims 1-3 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,186,263 issued to Takano in view of U.S. Patent No. 3,856,123 issued to Kinsey.

Takano teaches in Figures 1-9 and respective portions of the specification teaches of a transmission for an all-terrain vehicle (Figure 1) including a non-stage transmission disposed in a power transmission path from an engine to drive wheels (see belt transmission shown in Figure 7); a forward and backward movement switching device (61) capable of switching to a forward movement position, a neutral position, or a backward movement position (see linkage shown in Figure 3, which is connected to switching device with rod **R**), said forward and backward movement switching device being disposed in said power transmission path at a position near said engine (Figure 1); and a shift operation device (15) of rotary type (rotates about axis **C** shown in Figure 3) for switching forward and backward movement (Figure 3). The shift operation device and said forward and backward movement switching device being interlocked with each other (Figure 3).

Takano discloses the claimed invention except for positioning the shift operation device on the handle bar for the vehicle.

Kinsey teaches in Figures 1-8 and respective portions of the specification of a shift operation device (10) positioned on a handle bar at a position adjacent to and inwardly from a handle grip (Figure 1), the shift operation device being independent from the handle grip. Kinsey teaches of the shift operation device (10) including a rotary member (11) for a shift operation and a locking mechanism (see wedge and v-shaped

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groove 33 and 34 actuated by hand lever 35) for locking said rotary member so as not to move toward at least a position for backward movement from a position for neutral, said locking mechanism being configured to be handled by a hand (see Figures 1 and 6-7), which is in a state of gripping said handle grip, to make said locking mechanism unlocked.

It would have been obvious to one having ordinary skill in the art at the time of invention to incorporate the shift operation device, as taught by Kinsey, into the invention taught by Takano. One would be motivated to incorporate the shift operation device located on the handle bar of the vehicle taught by Takano to allow the user to shift from a drive to neutral state without removing his hand from the handle bar, thereby increasing the safety of the vehicle.

Takano as modified by Kinsey teaches of the rotary member, in the invention taught by Takano and as modified by Kinsey, is configured to be rotatable about an axis of said handle bar, and the shift operation device, in the invention taught by Takano and as modified by Kinsey, includes a holder member (see element 30; Figures 6 and 7 taught by Kinsey) fixed on said handle bar, said rotary member being rotatably mounted on said holder member.

***Allowable Subject Matter***

4. Claims 7-9 allowed.
5. Claims 4 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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6. Claims 5 and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The primary reason for the indication of allowable subject matter in this case is the inclusion of a locking pawl configured to move radially relative to a handle bar and configured to engage a plurality of notches corresponding to a forward, backward and neutral position, in combination with the other elements recited not found in the prior art of record.

### ***Response to Arguments***

7. In regard to applicant's arguments, beginning on page 6 of the amendment, that the motorcycle of Kinsey and the vehicle of Takano are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the office takes the position that the motorcycle of Kinsey and the vehicle of Takano are analogous art. Both of the vehicles taught by Kinsey and Takano are engine-driven straddle vehicles. Kinsey differs from Takano by teaching a two-wheeled vehicle where Takano shows a four-wheeled vehicle. It is noted that the claimed invention does not limit the number of wheels. The preamble of the claimed invention only provides the limitation: "an all-terrain vehicle." Motorcycles are well-known in the vehicle art to be all-terrain vehicles, for example a dirt bike is an all motorcycle terrain-vehicle. As such, it is

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the examiner's position that the invention taught by Kinsey and the vehicle of Takano are analogous art.

8. In regard to applicant's arguments, beginning in the last paragraph of page 6 and continuing to page 7 of the amendment, that there is no suggestion or motivation, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). As disclosed above, one would be motivated to incorporate the shift operation device located on the handle bar of the vehicle taught by Takano to allow the user to shift from a drive to neutral state without removing his hand from the handle bar, thereby increasing the safety of the vehicle.

9. In regards to applicant's argument (page 6): "there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the ATV speed change apparatus of Takano with the motorcycle shifting of Kinsey." The examiner refers applicant to the "Field of Invention" Col. 1 where Kinsey states: "[the] invention is directed to a...gear shifting mechanism which may be installed on a conventional motorcycle and used by the operator to perform its specific functions with ease and safety thereby eliminating the necessity of using his foot for this function". One would be motivated to provide Kinsey's shifting mechanism to increase the safety of the invention taught by Takano.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

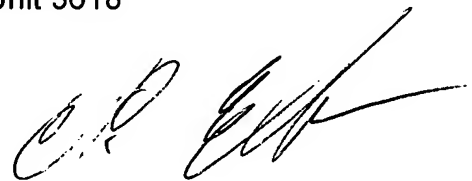


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
bls

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